

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERCULES INCORPORATED et al.,

Defendants.

CIVIL ACTION NO. 89-CV-562-SLR

CONSENT DECREE

WHEREAS, on October 16, 1989, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, for recovery of costs incurred and to be incurred in responding to a release or threat of release of hazardous substances at or in connection with the Delaware Sand and Gravel Superfund Site ("Site") (as defined below). The Complaint named eight defendants. The Complaint also sought a declaratory judgment as to liability pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), as well as such other relief as the Court found appropriate.

WHEREAS, on December 28, 1990, the United States, on behalf of the Administrator of the EPA, filed a First Amended Complaint

in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of additional costs incurred and to be incurred in responding to a release or threat of release of hazardous substances at or in connection with the Site. The First Amended Complaint, which added eleven additional defendants, also sought a declaratory judgment as to liability pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), as well as such other relief as the Court found appropriate.

WHEREAS, on November 30, 1992, the United States, on behalf of the Administrator of the EPA, filed a Second Amended Complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, for recovery of additional costs incurred between April 22, 1988 and November 29, 1991 and to be incurred in responding to a release or threat of release of hazardous substances at or in connection with the Site. The Second Amended Complaint added thirteen additional defendants, including Harvey & Harvey, Inc., formerly known as Harvey & Knotts, Inc., the Settling Defendant in this Consent Decree ("Settling Defendant"). The Second Amended Complaint also sought a declaratory judgment as to liability pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), as well as such other relief as the Court found appropriate.

WHEREAS, on or about April 18, 1995, the United States, on behalf of the Administrator of the EPA, filed a Motion to Amend and a proposed Third Amended Complaint in this matter pursuant to Sections 106, 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(b). In its Third Amended Complaint, the United States sought:

(1) recovery of additional costs incurred and to be incurred after November 29, 1991 in responding to a release or threat of release of hazardous substances at or in connection with the Site, together with accrued interest; (2) performance of studies and response work by certain defendants not parties to this Consent Decree at the Site in conformity with the Amended Record of Decision (as defined below) and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended ("NCP"); (3) a declaration as to defendants' liability; and (4) such other relief as the Court found appropriate.

WHEREAS, the United States' Third Amended Complaint in this matter is deemed amended to assert claims against the Settling Defendant pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

WHEREAS, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the CERCLA National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40650.

WHEREAS, in 1984, in response to an alleged release or a substantial threat of a release of hazardous substances at or from the Site, EPA and the State performed an emergency removal of 1644 drums from the Site.

WHEREAS, in response to an alleged release or a substantial threat of a release of hazardous substances at or from the Site, the State, pursuant to a cooperative agreement with EPA, commenced, in the fall of 1984, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP.

WHEREAS, the State completed a Remedial Investigation ("RI") Report on December 29, 1987 and a Final Feasibility Study ("FS") Report on February 12, 1988.

WHEREAS, the decision by EPA on the remedial action to be implemented at the Site was embodied in a final Record of Decision ("ROD"), prepared by the State and executed by EPA on April 22, 1988. The ROD includes a summary of responses to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

WHEREAS, based upon results of studies conducted at the Site, EPA and the State determined that the remedy selected in the ROD should be amended. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of a Focused Feasibility Study and of the proposed plan for an amended remedial action on July 29, 1993. EPA provided an opportunity for written and oral comments from the public on the proposed amended remedial action. EPA held a public meeting on the proposed amended remedial action on September 2, 1993. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the amended response action.

WHEREAS, the decision by EPA to amend the selected remedial action at the Site was embodied in a Record of Decision Amendment ("ROD Amendment"), concurred upon by the State and executed by EPA on September 30, 1993. The ROD Amendment included a summary of responses to the public comments. Notice of the final plan was

published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The ROD Amendment modifies the remedy selected for Operable Units 2 and 3 and is incorporated into the entire ROD for the Site, the Amended ROD.

WHEREAS, on September 12, 1991 the court entered a consent decree in United States v. B.P. America, Inc., et al., Civil Action No. 91-409-JJF ("Army Creek Decree") by which the United States agreed to reimburse New Castle County ("County"), pursuant to Section XXII.B-D of the Army Creek Decree and Section 112 of CERCLA, 42 U.S.C. § 9612, for a portion of the costs incurred by the County in pumping and treating the groundwater ("Groundwater") affected by the release of hazardous substances from the Army Creek Landfill Superfund site ("Army Creek Site") and the Delaware Sand and Gravel Superfund site. Under Section XXII.B-D of the Army Creek Decree the United States agreed to reimburse the County for up to forty percent (40%) of the County's costs to pump and treat the Groundwater, but which amount was not to exceed \$2,000,000.00, unless otherwise modified in accordance with the applicable provisions of the Army Creek Decree.

WHEREAS, the United States has incurred and will continue to incur unreimbursed Response Costs (as defined herein) with respect to the Site.

WHEREAS, the Settling Defendant does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint. The participation of Settling Defendant in this Consent Decree shall not be considered an admission for any

purpose in any proceeding and the fact of such participation shall not be admissible as evidence against Settling Defendant, except in an action to enforce this Consent Decree. The findings, alleged facts, conclusions and determinations in this Consent Decree have been made by EPA and are not admitted by Settling Defendant.

WHEREAS, the Settling Defendant contends that it has a limited ability to pay the Response Costs incurred and to be incurred at the Site, and has provided complete financial information to EPA for its review to support that contention, intending that EPA rely on that information;

WHEREAS, EPA has reviewed the financial submissions of the Settling Defendant and, in reliance on the truth and completeness of those submissions, has determined that the Settling Defendant has a limited ability to pay the United States' Response Costs at the Site;

WHEREAS, the United States and the Settling Defendant agree and this Court, by entering this Consent Decree, finds that settlement of this matter, in accordance with the terms of this Consent Decree, will avoid further prolonged and complicated litigation and that this Consent Decree is fair, reasonable and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

I. JURISDICTION

A. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106(a), 107(a) and 113(b) of

CERCLA, 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b) and 28 U.S.C. §§ 1331 and 1345.

B. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree, or this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

This Consent Decree applies to and is binding upon the Plaintiff, the Settling Defendant, and their successors and assigns. No change in ownership or corporate or other legal status, nor any transfer of assets or real or personal property of the Settling Defendant shall alter the responsibilities of the Settling Defendant under this Consent Decree.

III. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

A. "Amended ROD" shall mean the EPA Record of Decision relating to the Site issued by EPA on April 22, 1988 as modified by the ROD Amendment issued by EPA on September 30, 1993 (defined in

Paragraph Q, below).

B. "Army Creek Landfill Superfund Site" or "Army Creek Site" shall mean the "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 300.6, consisting of no less than 60 acres, located in New Castle County, Delaware.

C. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, and regulations promulgated pursuant thereto.

D. "Consent Decree" shall mean this Consent Decree.

E. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

F. "DNREC" shall mean the Delaware Department of Natural Resources and Environmental Control and any successor departments or agencies of the State of Delaware.

G. "Effective Date" shall mean the date established pursuant to Section IV of this Consent Decree.

H. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

I. "Guaranty Group" shall mean those guarantors who have entered the guaranties attached hereto as Appendix A.

J. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan codified at 40 C.F.R. Part 300, including any amendments thereto.

K. "Net Proceeds" shall mean the total amount of all payments and proceeds paid in connection with any environmental liability for the Site pursuant to any insurance or indemnification policies to Harvey & Harvey, E. Thomas Harvey III, or any company in which E. Thomas Harvey III holds an ownership interest, minus Permitted Expenses. "Permitted Expenses" are the reasonable attorneys' fees and disbursements incurred by the Settling Defendant, E. Thomas Harvey III, or any company in which E. Thomas Harvey III holds an ownership interest, in pursuing to settlement or judgment payments and proceeds pursuant to any such insurance or indemnification policies.

L. "Oversight Costs" shall mean all direct and indirect costs incurred by EPA at the Site in monitoring and supervising the settling defendants' compliance with the terms of the consent decree in United States v. Hercules, et al., No. 89-CV-562-SLR (D. Del.) ("Global Consent Decree") which was entered by the Court on June 14, 1995; however, Oversight Costs do not include, inter alia: (1) the costs of direct action by EPA to investigate, evaluate, or monitor a release, threat of release, or a danger posed by such a problem; (2) the costs of litigation or other enforcement activities; (3) the costs of determining the need for or taking direct response actions by EPA to conduct a removal or remedial action at the Site, including, but not limited to, the cost of activities by EPA pursuant to the following sections of the Global Consent Decree: Section VII (Additional Response Actions), Section VIII (U.S. EPA Periodic Review), and Section XVI (Emergency

Response); (4) the cost of undertaking the periodic review set forth in Section VIII of the Global Consent Decree (U.S. EPA Periodic Review) or otherwise determining whether or to what extent the Work, as defined in the Global Consent Decree, has reduced the release or threat of release of hazardous substances at the Site; (5) the cost of enforcing the terms of the Global Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XXI of the Global Consent Decree (Dispute Resolution); (6) the cost of securing access under Section X of the Global Consent Decree (Access); (7) the costs incurred by the United States pursuant to Sections VI.F of the Global Consent Decree (Performance of the Work by Settling Defendant); and (8) the costs incurred by the United States, pursuant to Section 112 of CERCLA, 42 U.S.C. § 9612, and Section XXII-B-D of the Army Creek Decree, to reimburse the County for a portion of the costs incurred by the County in pumping and treating the Groundwater affected by the release of hazardous substances from the Site.

M. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

N. "Parties" shall mean the United States and the Settling Defendant.

O. "Plaintiff" shall mean the United States.

P. "Record of Decision" or "ROD" or "Original Record of Decision" or "Original ROD" shall mean the EPA Record of Decision relating to the Site and signed on April 22, 1988 by the Regional Administrator, EPA Region III, and all attachments thereto.

Q. "ROD Amendment" shall mean the EPA Record of Decision Amendment relating to the Site and signed on September 30, 1993, by the Regional Administrator, EPA Region III, and all attachments thereto.

R. "Response Costs" shall mean all costs incurred and to be incurred pursuant to CERCLA in connection with the Site.

S. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

T. "Settling Defendant" shall mean Defendant Harvey & Harvey, Inc., formerly known as Harvey and Knotts, Inc.

U. "Site" shall mean the Delaware Sand and Gravel Superfund site, encompassing approximately 27 acres, located in New Castle County, Delaware approximately two miles southwest of the City of New Castle at the end of Grantham Lane. The Site includes the groundwater affected by the release of hazardous substances from the Army Creek Site and the Delaware Sand and Gravel Site.

V. "State" shall mean the State of Delaware.

W. "United States" shall mean the EPA and the United States Department of Justice acting on behalf of the EPA.

IV. EFFECTIVE DATE

This Consent Decree shall be effective upon the date of its entry by the Court.

V. REIMBURSEMENT OF RESPONSE COSTS

A.1 Settling Defendant shall pay to the United States \$1,300,000.00 in reimbursement of EPA's Response Costs according to the following schedule:

- a) \$200,000.00 within thirty (30) days of the date of entry of this Consent Decree;
- b) \$200,000.00 plus accrued interest as set forth below on the first anniversary of the payment in Section V.A.1.a, above;
- c) \$300,000.00 plus accrued interest as set forth below on the second anniversary of the payment in Section V.A.1.a, above;
- d) \$300,000.00 plus accrued interest as set forth below on the third anniversary of the payment in Section V.A.1.a, above; and
- e) \$300,000.00 plus accrued interest as set forth below on the fourth anniversary of the payment in Section V.A.1.a, above.

The payment amount and schedule is based on EPA's evaluation of the Settling Defendant's ability to pay the United States' Response Costs incurred and to be incurred with respect to the Site. Interest shall begin to accrue on the unpaid balance from the 31st calendar day following the effective date of this Consent Decree. The interest shall accrue at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), which currently is 5.85%.

A.2 Payments pursuant to Section V.A.1 shall be made to the Delaware Sand and Gravel Superfund Site Special Account ("Special Account") for payment to the United States of Response Costs to be

incurred by the United States at the Site; provided, however, that any payments from the Special Account shall not be used to pay EPA's Oversight Costs, as defined in this Consent Decree. Payments tendered to the Special Account pursuant to Section V.A.1 shall be made by remitting a cashier's or certified check made payable to "Treasurer of the United States." The check should identify the Delaware Sand and Gravel Superfund Site Special Account, EPA Region III, and CERCLA Number 0345AC00 and should be mailed or delivered to the following address:

United States Attorney
District of Delaware
Chemical Bank Plaza
P.O. Box 2046
1201 Market Street
Wilmington, DE 19899-2046

A.3 Settling Defendant shall also pay to the United States two-thirds of all Net Proceeds, as defined above, to the extent that any such Net Proceeds may be recovered. Settling Defendant agrees to notify EPA and the Department of Justice within 10 days of learning of the receipt of any indemnification or insurance payment relating to the Site by anyone, including but not limited to Harvey & Harvey, E. Thomas Harvey III, and any company in which E. Thomas Harvey III holds an ownership interest. Payment shall be made in accordance with instructions provided by EPA after it receives notification of the insurance or indemnification payment.

B. When sending the checks referred to in paragraph A, immediately above, the Settling Defendant shall also send a copy and a notice of payment to:

Docket Clerk (3RCOO)
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

and

Leo Mullin (3HW12)
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

C. If the United States must bring an action to collect any payment required under this Section V, the Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to, attorney's fees.

D. Payments made under Paragraphs A and C of this Section V shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section V.

VI. STIPULATED PENALTIES

A. In addition to any other remedies or sanctions available to the United States, if the Settling Defendant fails or refuses to comply with any term or condition of this Consent Decree, it shall be liable to the United States upon demand for stipulated penalties

for each day, or portion thereof, for each violation in the following amounts:

<u>Period of Violation</u>	<u>Penalty Per Violation Per Day</u>
1st through 7th day	\$ 500
8th through 15th day	\$ 1,000
16th day and beyond	\$ 1,500

For the purposes of determining a payment obligation violation, and therefore the assessment of penalties, payment will be deemed made on the date it is received at the address listed in Paragraph VI B immediately below.

B. All stipulated penalties owed to the United States under this Section VI shall be due and payable within thirty (30) days of the Settling Defendant's receipt from the United States of a demand for payment of stipulated penalties. All payments of stipulated penalties shall be by certified check made payable to "Treasurer of the United States" and shall be mailed or delivered to the following address:

United States Attorney
District of Delaware
Chemical Bank Plaza
P.O. Box 2046
1201 Market Street
Wilmington, DE 19899-2046

All such checks shall reference the EPA Region and the Site Spill Number provided to Settling Defendant and DOJ Case Number 90-11-2-298.

C. When sending the certified check referred to in paragraph B, immediately above, the Settling Defendant shall also send a copy of its check to:

Docket Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

and

Leo Mullin (3HW12)
Cost Recovery Section
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

D. Stipulated penalty amounts due and owing pursuant to the terms of this Consent Decree but not paid in accordance with the terms of this Consent Decree shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

VII. CERTIFICATION OF SETTLING DEFENDANT

Based on the financial information submitted to EPA and representations made by the Settling Defendant in the affidavit (Appendix B to this Consent Decree) submitted with the Settling Defendant's signature page to this Consent Decree, the Settling Defendant certifies that it has provided to the United States complete, accurate, and truthful information about its financial condition, with the intention that EPA rely on this information, and that there has been no material improvement in the Settling Defendant's financial condition between the time the information

was submitted to the United States and the time the Settling Defendant signs this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFF

A. In consideration of the payments that will be made and the requirements that will be followed by the Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Paragraphs B and D of this Section VIII, the United States covenants not to sue or to take administrative action relating to the Site pursuant to Sections 106 and 107 of CERCLA against the Settling Defendant, or its current or former officers, directors or shareholders, to the extent they acted in the scope of their employment for the Settling Defendant. These covenants not to sue extend only to the Settling Defendant, and do not extend to any other person, except as noted above. These covenants not to sue shall take effect upon receipt by the United States of all payments required by Section V (Reimbursement of Response Costs) of this Consent Decree.

B. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further

response actions relating to the Site or (2) to reimburse the United States for additional costs of response if:

1. The Settling Defendant's certifications in Section VII, above, or in Appendix B hereto are false or otherwise inaccurate; or

2.a conditions at the Site, previously unknown to EPA, are discovered or

2.b information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with any other relevant information indicates that the Amended ROD is not protective of human health or the environment.

C. For purposes of paragraph B.2 of this Section VIII, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Original ROD, the ROD Amendment, and the administrative records supporting the Original ROD and the ROD Amendment.

D. Reservation of Rights.

1. General. The covenant not to sue set forth in Paragraph A, above, does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters. Except as provided in Paragraph A, above, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial

or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision of law, against Settling Defendant or any other person not a Party to this Consent Decree.

2. Specific reservations. The covenant not to sue set forth in Paragraph A of this Section above do not apply to the following:

- a. claims based upon failure of Settling Defendant to meet the requirements of this Consent Decree;
- b. claims for damages to natural resources, as defined in section 101(6) of CERCLA, 42 U.S.C. § 9601(6);
- c. claims for costs incurred by any natural resources trustees;
- d. claims based upon criminal liability; and
- e. any liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site.

IX. COVENANTS BY SETTLING DEFENDANT

Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree including, but not limited to: (1) any direct or indirect claim for

reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9613, or any other provision of law; (2) any claim against the United States, including any department, agency, or instrumentality of the United States, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or any other provision of Federal law, related to the Response Costs; or (3) any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. FINANCIAL ASSURANCES

All payment obligations of the Settling Defendant pursuant to this Consent Decree have been jointly and severally guaranteed to the United States by each member of the Guaranty Group by entering the guaranties attached hereto as Appendix A.

XI. PRESERVATION OF FINANCIAL RECORDS

Settling Defendant certifies that on or before December 15, 1995 it caused all financial records that had been provided for inspection to representatives of EPA and DOJ to be deposited with Magistrate Judge Mary Pat Trostle. These records may be reviewed by representatives of EPA and DOJ at any time, and shall be treated by EPA and DOJ as confidential, in accordance with the

confidentiality agreement between the parties; provided that such review shall be solely for purposes related to settlement of this matter. These records shall remain with the Magistrate Judge until both parties agree that they may be released or until all litigation involving the Settling Defendant's alleged liability regarding the Site is concluded, whichever is later in time. The parties agree that, after this Consent Decree is approved by the Court, they will meet periodically in order to determine if the EPA and DOJ have a continuing need for the records in accordance with this Section XI; the records will be released to the Settling Defendant if the parties agree there is no such need. The Settling Defendant agrees to provide advance notice to the United States of any requests to the Court to release these records.

XII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

A. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

B. With regard to claims for contribution against the Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree and it is their express intent that the

Settling Defendant is entitled to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2). For the purposes of this Section XII.B, and except as provided in Paragraphs VIII.B and VIII.D, matters addressed in this Consent Decree shall be the Settling Defendant's liability pursuant to and/or in connection with Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for implementation of response actions at the Site, including but not limited to liability for Response Costs incurred or to be incurred by the United States or by any other person with respect to or in connection with the Site.

C. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree it will notify the United States in writing within ten (10) days of service of the complaint on it. In addition, Settling Defendant shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial. Settling Defendant acknowledges that the United States has no obligation to defend it in any suit or claim for contribution.

D. In any subsequent administrative or judicial proceeding

initiated by the United States for injunctive relief, recovery of Response Costs, or other appropriate relief relating to the Site, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by Plaintiff).

XIII. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over both the subject matter of and the Parties to this Consent Decree in order to enforce the terms and provisions of this Consent Decree.

XIV. MODIFICATION

The terms and provisions of this Consent Decree may be modified by agreement of the Parties. All such modifications shall be made in writing and shall be approved by the Court.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

A. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree

disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

B. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either of the Parties and the terms of the agreement may not be used as evidence in any litigation among the Parties.

XVII. SIGNATORIES/SERVICE

A. The undersigned representative of the Settling Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

B. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of this Consent Decree.

C. The Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree.

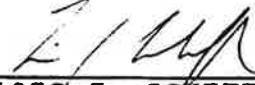
SO ORDERED THIS _____ DAY OF _____, 19____

United States District Judge

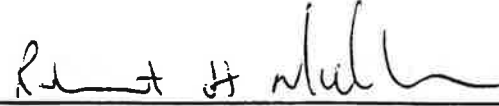
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Hercules Incorporated et al., relating to the Delaware Sand and Gravel Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 2/13/86




LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530



ROBERT H. MILLER
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20044

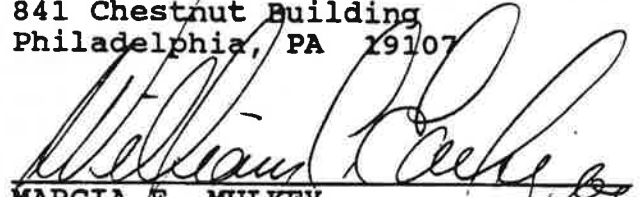
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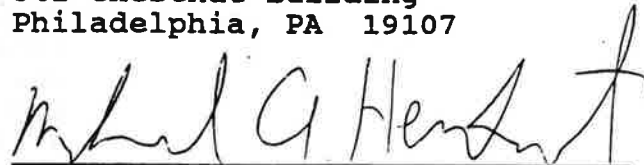
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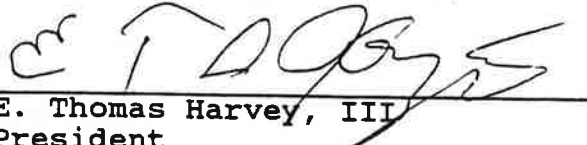


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HARVEY & HARVEY, INC. enters into this Consent Decree in the matter of United States v. Hercules Incorporated et al., relating to the Delaware Sand and Gravel Superfund Site.

FOR HARVEY & HARVEY, INC.

Date: 12/27/95


E. Thomas Harvey, III
President
Harvey & Harvey, Inc.
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Wilmington, DE 19804

Agent Authorized to Accept Service on Behalf of Above-signed Party:

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